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Bindu Rama Rao

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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO, IL 60661

EXAMINER

AGWUMEZIE, CHARLES C

ART UNIT

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3685

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/754,378	Applicant(s) RAO ET AL.	
	Examiner CHARLES C. AGWUMEZIE	Art Unit 3685	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05/10/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of group II claims 20-40 in the reply filed on November 3, 2008 is acknowledged. The traversal based on the amended independent claim 1 is found persuasive because independent claim 1 and 20 are not distinctly patentable as amended. The requirement for restriction is therefore withdrawn. Claims 1-40 is hereby examined on its merits.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1-40**, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayes, Jr. et al (hereinafter "Hayes") U.S. Patent No. 5,974,312 in view of Naito et al (hereinafter "Naito") U.S. Patent Application Publication No. 2004/0153549 A1.

4. As per **claims 1 and 20**, Hayes, discloses a method of updating, the method comprising:

receiving a notification in the electronic device (see fig. 5A, which discloses notification to phone); and

determining the authenticity of the notification in the electronic device, wherein determining the authenticity of the notification comprises contacting a notification history server, the notification history server keeping a record of notifications sent to the electronic device (see fig. 5A, which discloses authentication of the notification by phone; col. 2, lines 35-50, the wireless programmer stores the updated software, revision number of the updated software, and (at the end of the re-programming process) a list of electronic devices by serial number which have been successfully re-programmed, and their corresponding software revision levels; col. 13, lines 55-60, which discloses that the wireless programmer 200 has been authenticated...; col. 15, lines 25-40).

What Hayes does not explicitly teach is a notification history server. Hayes however discloses a notification channel for notifying the mobile devices of updates.

Naito discloses a notification history server (0126)

Accordingly it would have been obvious to one of ordinary skill in the art at time of applicant's invention to modify the method of Hayes and incorporate the method of contacting a notification history server in view of the teachings of Naito since the claimed invention is merely a combination of old and known elements and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Art Unit: 3685

5. As per **claims 2 and 24**, Hayes further discloses the method, further comprising: informing the electronic device of availability of at least one update package for updating at least one of firmware and software resident in the electronic device (col. 9, lines 55-68); but failed to explicitly disclose

simultaneously informing a notification history server that a notification has been sent to the electronic device.

Naito discloses simultaneously informing a notification history server that a notification has been sent to the electronic device (0126)

Accordingly it would have been obvious to one of ordinary skill in the art at time of applicant's invention to modify the method of Hayes and incorporate the method of simultaneously informing a notification history server that a notification has been sent to the electronic device in view of the teachings of Naito since the claimed invention is merely a combination of old and known elements and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

6. As per **claim 4 and 34**, Hayes further discloses the method, further comprising: ignoring the notification in the electronic device upon determining that the notification is inauthentic (col. 13, line 60-col. 14, line 5; col. 15, line 40-col. 16, line 5);

recording that an inauthentic notification has been received (col. 15, line 40-col. 16, line 5); and

Art Unit: 3685

waiting to receive another notification in the electronic device (col. 13, line 60-col. 14, line).

7. As per **claims 5 and 26**, Hayes further discloses the method, further comprising:
determining identification information of a server and update package associated with the notification upon determining that the notification received in the electronic device is authentic (col. 9, lines 40-68, which discloses channel identification code or unique update notification data...and revision number of the new software....).

8. As per **claim 6**, Hayes further discloses the method, further comprising:
retrieving the update package (see fig. 3; col. 3, lines 10-20); and
performing an update of at least one of firmware and software resident in the electronic device (col. 10, lines 10-40).

9. As per **claims 7 and 30**, Hayes further discloses the method, wherein the notification comprises one of a short message service (SMS) notification, an instant messaging (IM) notification, an email notification, a wireless application protocol (WAP) push message notification, and an enhanced messaging service (EMS) notification (see fig. 1).

Art Unit: 3685

10. As per **claims 8 and 23**, Hayes further discloses the method, wherein the electronic device comprises one of a mobile cellular phone handset, a personal digital assistant, a pager, an MP3 player, and a digital camera (see fig. 1).

11. As per **claims 9 and 27**, Hayes further discloses the method, wherein determining the authenticity of the notification in the electronic device further comprises determining whether the notification was sent from an authorized server (see fig. 5A, which discloses authentication between the wireless programmer and the phone).

12. As per **claims 10 and 28**, Hayes further discloses the method, wherein an authorized server comprises one of a management server and a customer care center (col. 12, lines 35-45, which discloses under the control of an operator).

13. As per **claim 11**, Hayes further discloses the method, wherein the notification comprises location and identification information regarding a management server providing access to an update package and information regarding the update package (col. 9, lines 40-68, which discloses channel identification code or unique update notification data...and revision number of the new software....).

14. As per **claims 12 and 33**, Hayes further discloses the method, wherein location and identification information comprise at least one of a universal resource locator (URL), an internet protocol (IP) address, a dynamic security key, end-user data,

Art Unit: 3685

program update information, download scheduling information, and notification protocol information (col. 9, lines 40-68, which discloses unique update notification data...).

15. As per **claim 14**, Hayes further discloses the method, wherein retrieving the update package from the default management server is performed after authentication of the notification message (see fig. 5A, which discloses authentication).

16. As per **claim 15**, Hayes further discloses the method, further comprising:
retrieving an update package via a download agent in the electronic device (see fig. 1, mobile phone has software that enables it to retrieve or download firmware and other updates); and

updating at least one of firmware and software in the electronic device via an update agent in the electronic device (see fig. 5F which discloses successful update...).

17. As per **claims 16 and 37**, Hayes further discloses the method, further comprising preventing unauthorized updates of at least one of firmware and software in the electronic device (see fig. 8A, which discloses turn phone off if the number of attempts to authenticate is exceeded).

18. As per **claims 17 and 38**, Hayes further discloses the method, wherein preventing unauthorized updates further comprises:

when a notification sent to the electronic device is discernable by an end-user and the end-user is prompted to initiate an update process, and when the end-user initiates the update process, the electronic device is adapted to determine the authenticity of the notification, and abort the update process if the notification is determined to be inauthentic, and permit the update package to be downloaded, if the notification is determined to be authentic (see fig. 8A).

19. As per **claims 18 and 39**, Hayes further discloses the method, wherein preventing unauthorized updates further comprises:

receiving a dynamic key component from a management server in the electronic device (col. 12, lines 1-20, which discloses “a key”);

accessing a static key component from memory in the electronic device (col. 12, lines 1-20, which discloses ESN); and

instructing a download agent to use the dynamic key component and the static key component to generate a security key, wherein the generated security key facilitates access to a downloadable update package in an update package repository if the electronic device is authorized access to the update package, otherwise the electronic device is denied access to the update package (col. 12, lines 20-35).

20. As per **claims 19 and 40**, Hayes further discloses the method, further comprising provisioning an address of a management server in the electronic device during a bootstrap provisioning event by sending a notification, the notification comprising server

Art Unit: 3685

address information, and wherein the electronic device is adapted to access and employ the address of the management server provisioned in the electronic device after the bootstrap provisioning event (col. 14, lines 40-65).

21. As per **claim 21** Hayes further discloses the network, wherein the electronic device at least comprises:

non-volatile memory; a short message entity; random access memory; and security services (col. 1, lines 10-30).

22. As per **claim 22**, Hayes further discloses the network, wherein the non-volatile memory in the electronic device at least stores:

an update agent (col. 4, line 55-col. 5, line 10);

a firmware and real-time operating system; an operating system layer; a download agent or browser; and an end-user related data and content (see fig. 8B).

23. As per **claim 25**, Hayes further discloses the network, wherein the notification history server is adapted to determine whether a notification is authentic by examining message identification information in the notifications (see fig. 5A, which discloses authentication between the WP and the phone).

24. As per **claim 29**, Hayes further discloses the network, further comprising a short message center (SMC) adapted to store and forward messages to and from the

Art Unit: 3685

electronic device, wherein the short message center (SMC) is adapted to send, upon instruction from the management server or a customer care center, notifications to the electronic device regarding availability of update packages (col. 14, lines 55-65).

25. As per **claim 31**, Hayes further discloses the network, wherein notifications further comprise at least one user data field containing message identification information (col. 12, lines 1-15).

26. As per **claim 32**, Hayes further discloses the network, wherein notifications further comprise location and identification information regarding a management server providing access to an update package and information regarding the update package (col. 9, lines 40-65).

27. As per **claim 35**, Hayes further discloses the network, wherein the management server comprises the notification history server and an update package repository (see fig. 5A, which discloses notification).

28. As per **claim 36**, Hayes further discloses the network, wherein the notification history server is incorporated into a short message center in the network (see fig. 1).

29. **Claim 13** is rejected under 35 U.S.C. 103(a) as being unpatentable over Hayes, Jr. et al (hereinafter "Hayes") U.S. Patent No. 5,974,312 in view of Naito et al

Art Unit: 3685

(hereinafter "Naito") U.S. Patent Application Publication No. 2004/0153549 A1 as applied to claim 1 above, and further in view of Marsh et al (hereinafter "Marsh") U.S. Patent Application Publication No. 2002/0073304 A1.

30. As per **claim 13**, Hayes failed to explicitly disclose the method, further comprising retrieving an update package from a default management server by accessing an address of the default management server when no server address information is included in the notification, the address of the default management server being provisioned in the electronic device during a bootstrap provisioning event.

Marsh discloses the method, further comprising retrieving an update package from a default management server by accessing an address of the default management server when no server address information is included in the notification, the address of the default management server being provisioned in the electronic device during a bootstrap provisioning event (0013; 0014; 0015).

Accordingly it would have been obvious to one of ordinary skill in the art at time of applicant's invention to modify the method of Hayes and incorporate the method further comprising retrieving an update package from a default management server by accessing an address of the default management server when no server address information is included in the notification, the address of the default management server being provisioned in the electronic device during a bootstrap provisioning event in view of the teachings of Marsh since the claimed invention is merely a combination of old and known elements and in the combination each element merely would have performed the

Art Unit: 3685

same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Conclusion

31. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The reference cited to Cook et al U.S. Patent Application Publication No. 2002/0059095 A1 is a document considered relevant to the claimed invention.

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles C. Agwumezie whose number is **(571) 272-6838**. The examiner can normally be reached on Monday – Friday 8:00 am – 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Calvin Hewitt can be reached on **(571) 272 – 6709**.

Art Unit: 3685

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charlie C Agwumezie/
Primary Examiner, Art Unit 3685
February 2, 2009